

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

CHARLES WANG,

Petitioner,

No. C 10-5823 PJH (PR)

vs.

**ORDER FOR RESPONDENT  
TO SHOW CAUSE**

S. SMITH,

Respondent.

Petitioner filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This petition was dismissed without prejudice at screening but the Ninth Circuit has remanded the case so respondent could be served and file a response. Docket No. 10.

**BACKGROUND**

Petitioner was found guilty of corporal injury on a spouse after a court trial and sentenced to three years of probation. *People v. Wang*, 2007 WL 2177900 \*1 (Cal. App. 6 Dist, 2007).

**DISCUSSION**

**A. Standard of Review**

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must "specify all the grounds for relief available to the petitioner ... [and] state the facts supporting each ground." Rule 2(c) of the Rules

1 Governing § 2254 Cases, 28 U.S.C. foll. § 2254. “[N]otice’ pleading is not sufficient, for the  
2 petition is expected to state facts that point to a ‘real possibility of constitutional error.’”  
3 Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir.  
4 1970)). “Habeas petitions which appear on their face to be legally insufficient are subject  
5 to summary dismissal.” *Calderon v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102,  
6 1108 (9th Cir. 1996) (Schroeder, J., concurring).

7 **B. Legal Claims**

8 As grounds for federal habeas relief, petitioner asserts: (1) ineffective assistance of  
9 counsel; (2) the trial court denied a motion to change venue and made a biased remark; (3)  
10 ineffective assistance of appellate counsel; (4) the trial court was biased; (5) the police did  
11 not conduct a fair investigation and the prosecutor should have known the allegations were  
12 false; (6) he was denied postage in jail and not provided a mattress; and (7) the transcripts  
13 were altered.

14 Claim six regarding being denied postage and a mattress does not involve the  
15 underlying conviction and is dismissed from the petition. The remaining claims will  
16 proceed.

17 **CONCLUSION**

18 1. Claim six is dismissed but the remaining claims shall proceed.

19 2. The clerk shall serve by regular mail a copy of this order and the petition and all  
20 attachments thereto on respondent and respondent's attorney, the Attorney General of the  
21 State of California. The clerk also shall serve a copy of this order on petitioner.

22 3. Respondent shall file with the court and serve on petitioner, within sixty days of  
23 the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules  
24 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be  
25 granted. Respondent shall file with the answer and serve on petitioner a copy of all  
26 portions of the state trial record that have been transcribed previously and that are relevant  
27 to a determination of the issues presented by the petition.

28 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with

1 the court and serving it on respondent within thirty days of his receipt of the answer.

2 4. Respondent may file a motion to dismiss on procedural grounds in lieu of an  
3 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing  
4 Section 2254 Cases. If respondent files such a motion, it is due fifty-six (56) days from the  
5 date this order is entered. If a motion is filed, petitioner shall file with the court and serve  
6 on respondent an opposition or statement of non-opposition within twenty-eight (28) days of  
7 receipt of the motion, and respondent shall file with the court and serve on petitioner a reply  
8 within fourteen days of receipt of any opposition.

9 5. Petitioner is reminded that all communications with the court must be served on  
10 respondent by mailing a true copy of the document to respondent's counsel. Petitioner  
11 must keep the court informed of any change of address and must comply with the court's  
12 orders in a timely fashion. Failure to do so may result in the dismissal of this action for  
13 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez v.*  
14 *Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

15 **IT IS SO ORDERED.**

16 Dated: February 14, 2014.



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PHYLLIS J. HAMILTON  
United States District Judge

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